

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

November 24, 2003

DIVISION ONE

B163189 Van Wagenen (Not for Publication)
 v.
 Berkley Industries, LLC

The judgment dismissing the action is reversed and the matter is remanded for proceedings consistent with this opinion. Van Wagenen is entitled to her costs on appeal.

Ortega, J.

We concur: Spencer, P.J.
 Vogel (Miriam A.), J.

DIVISION THREE

B161461 Weinstein (Not for Publication)
 v.
 William S. Hart Union High School District

The judgment is affirmed. The District shall recover its costs on appeal.

Klein, P.J.

We concur: Croskey, J.
 Kitching, J.

November 24, 2003 (Continued)

DIVISION THREE (Continued)

B163047 Thomas (Not for Publication)
v.
Bristol Farms, Inc.

The judgment is affirmed. Bristol Farms shall recover its costs on appeal.

Klein, P.J.

We concur: Kitching, J.
 Cooper, J. (Assigned)

B160388 People (Not for Publication)
v.
Gaines, et al.

Defendants' convictions for attempted robbery, and the special circumstance findings of murder during the commission of an attempted robbery, are vacated. Gaines is to be awarded 348 days of presentence custody credit. As modified, the judgments are affirmed. The trial court will forward a corrected abstract of judgment to the Department of Corrections.

Klein, P.J.

We concur: Kitching, J.
 Aldrich, J.

B158232 Aguayo (Not for Publication)
v.
Aguayo

The order is affirmed. The issue of the amount of attorney fees Jesus is to pay Bonnie for responding to this appeal is remanded to the trial court for its determination. (2030, subd. (c); *In re Marriage of Schnabel* (1994) 30 Cal.App.4th 747, 756.) Bonnie shall recover costs on appeal.

Klein, P.J.

We concur: Croskey, J.
 Kitching, J.

DIVISION FOUR

B121021 Edgar and Johnny Winter (Not for Publication)
v.
DC Comics, et al.

The judgment is affirmed. Respondent(s) to recover costs.

Hastings, J.

We concur: Vogel (C.S.), P.J.
Curry, J.

B162484 Cox (Not for Publication)
v.
Macerich Corporation, Inc.

The judgment is affirmed.

Curry, J.

We concur: Vogel (C.S.), P.J.
Epstein, J.

B164131 People (Not for Publication)
v.
Gutierrez
David Perez Bail Bonds

The order is affirmed.

Hastings, J.

We concur: Epstein, Acting P.J.
Curry, J.

DIVISION FOUR (Continued)

B156220 Adamany, Jr. (Not for Publication)

v.

Superior Court, Los Angeles County
(Alagem, et al., r.p.i.)

The petition for writ of mandate is granted. The trial court is directed to vacate its order granting the petition to arbitrate and to issue a new and different order severing the portion of the arbitration clause prohibiting an award of punitive damages and ordering arbitration on the remaining issues. The order of the trial court should be consistent with the views expressed herein concerning cost-sharing and the agreement of real parties to bear those costs. The parties are to bear their own costs in this proceeding.

Epstein, J.

We concur: Vogel (C.S.), P.J.
Hastings, J.

DIVISION FIVE

B161740 Gordon Wheeler, et al. (Not for Publication)

v.

Dan Castro, et al.

The order granting the demurrer on the first cause of action for fraud and/or deceit is affirmed. The trial court is directed to vacate the order sustaining the demurrer on the second and third causes of action for, respectively, medical malpractice and loss of consortium, and to enter a new order denying the demurrer on those two causes of action. Plaintiffs to recover costs on appeal.

Armstrong, J.

We concur: Turner, P.J.
Grignon, J.

November 24, 2003 (Continued)

DIVISION FIVE (Continued)

B163924 People (Certified for Partial Publication)
v.
Martin Maciel

The judgment is affirmed.

Grignon, J.

We concur: Turner, P.J.
 Mosk, J.

DIVISION SIX

B162834 People (Not for Publication)
v.
Martin

The case is remanded to the superior court with directions to conduct an in camera hearing to determine whether the information regarding the surveillance location, its elevation and/or its direction vis-à-vis the corner where appellant was observed, is privileged under Evidence Code section 1040, subdivision (b)(2). The court shall further determine whether the information is material to the issue of appellant's guilt or innocence within the meaning of Evidence Code section 1042, subdivision (a). If the court determines the surveillance location is not material, the judgment shall remain intact. If it determines the information is material, the court shall vacate the judgment and reset the cause for trial. (Pen. Code section 1382, subd. (a)(2).) On retrial, if any, evidence of police observations from the surveillance location shall not be received unless the People waive the privilege under Evidence Code section 1042.

Coffee, J.

We concur: Gilbert, P.J.
Perren, J.

DIVISION SIX (Continued)

[illegible]

The judgment (order revoking probation and imposing prison sentence) is affirmed.

Coffee, J.

We concur: Gilbert, P.J.
Perren, J.

B164166 People (Not for Publication)
v.
Sauceda

The judgment is affirmed.

Gilbert, P.J.

We concur: Coffee, J.
Perren, J.

B168444 People v. Becker (Not for Publication)

The judgment is affirmed.

Gilbert, P.J.

We concur: Yegan, J.
Perren, J.

B164082 People (Not for Publication)
v.
Ritchie

The judgment is affirmed.

Yegan, J.

We concur: Gilbert, P.J.
Perren, J.

November 24, 2003 (Continued)

DIVISION SIX (Continued)

B168319 People (Not for Publication)
v.
Ortiz

The judgment is affirmed.

Coffee, J.

We concur: Gilbert, P.J.
Perren, J.

B158889 People (Not for Publication)
v.
Richson, et al.

Nicholson's sentence is modified to strike the one-year prison terms imposed pursuant to section 667.5, subdivision (b), to strike the sentences imposed pursuant to section 12022.53, subdivision (b) and (c) and section 12022 and to strike the fine imposed pursuant to section 1202.45. In all other respects the judgment is affirmed. The judgment as to Richson is affirmed.

Gilbert, P.J.

We concur: Coffee, J.
Perren, J.

B167599 People (Not for Publication)
v.
Murphy

The order is affirmed.

Gilbert, P.J.

We concur: Coffee, J.
Perren, J.

DIVISION SIX (Continued)

B159647 Laursen (Not for Publication)
v.
Pope

The award for punitive damages is reduced from \$750,000 to \$295,000. We direct the trial court to enter a new judgment for \$396,000 compensatory damages and \$295,000 punitive damages. The judgment, as modified, is affirmed. Given the unique nature of this appeal and the history of litigation, the Honorable E. Jeffrey Burke, Judge of the Superior Court, County of San Luis Obispo, is specially appointed to take all necessary steps to enforce the judgment as modified. The parties shall bear their own costs on appeal.

Yegan, J.

We concur: Gilbert, P.J.
Perren, J.

DIVISION SEVEN

B163258 People
v.
Contreras

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

B161390 King
v.
Regents of the University of California

Filed order modifying opinion. (No change in the judgment)

DIVISION SEVEN (Continued)

B166658 Los Angeles County, D.C.S. (Certified for Publication)
v.
Rebecca T. and Calvin H.
In re Amirah H.

The detention and dispositional orders, orders from the subsequent status review hearings and the order of the juvenile court terminating Calving H. and Rebecca T.'s parental rights to Amirah H. are reversed. On remand, the juvenile dependency court is directed to order the respondent DCFS to comply with ICWA notice provisions. If, after proper inquiry and notice, no response from the BIA or a tribe is received indicating the minor is an Indian child, or the responses received indicate the minor is not an Indian child, within the meaning of ICWA, the juvenile court shall reinstate all prior orders including the order terminating parental rights. (E.g., In re Marianni J., supra, 90 Cal.App.4th at p. 740.) If, on the other hand, the BIA or a tribe determines the minor is an Indian child under ICWA, the juvenile court shall conduct the detention, disposition and all subsequent hearings in conformity with the provisions of the ICWA California Rules of Court 1439. In all other respects, the order terminating parental rights is affirmed.

Woods, J.

We concur: Johnson, Acting P.J.
Zelon, J.

DIVISION EIGHT

Court convened at 9:01 a.m.

Present: Cooper, P.J., Rubin, J., Boland, J., Flier, J. and Connie Hon, Deputy Clerk.

Each of the following:

B161177 People v. Brown
B166724 People v. Kartiganer
B165778 DCFS v. James W. & Bridget C.
B164380 DCFS v. Brandie M.
B168137 DCFS v. Searcy F.
B164567 People v. Kirakosyan

Argument waived, cause submitted.

DIVISION EIGHT (Continued)

B160969 Chavarria
 v.
 Kolodaro, et al.

Merits:
Argued by Steven Zrucky for appellant and by Leon Small for respondents.
Cause submitted.

B160578 Gold
 v.
 I. Donald Weissman, et al.

Merits:
Argued by Allan F. Grossman for appellant and by Jennifer Joseph for
respondents. Cause submitted.

B158596 Barlow
 v.
 Singleton

Merits:
Argued by Errol Gordon for appellant and by Claudia Ribet for respondent.
Cause submitted.

B157936 Franks, et al.
 v.
 The Burlington Northern & Santa Fe Railway Company

Merits:
Argued by David L. Armen for appellants and by Ronald Novotny for
respondent. Cause submitted.

Court recessed at 10:49 a.m.

Court reconvened at 10:58 a.m.

Present: Cooper, P.J., Rubin, J., Boland, J., Flier, J. and Connie Hon, Deputy Clerk.

DIVISION EIGHT (Continued)

B161091 Evans
 v.
 Regents Of The University Of California

Merits:
Argued by Michael J. Melton for appellant and by Christopher M. Patti for respondent. Cause submitted.

B156427 Sherman Villas Homeowners Associations,
 v.
 Azargin;
 Soheyly,

Merits:
Argued by Joel A. Spivak for appellant (Soheyly), by Ramin Azadegan for appellant (Azargin) and by Jonathan Gabriel for respondent. Cause submitted.

Court recessed at 12:07 p.m.

Court reconvened at 1:00 p.m.

Present: Cooper, P.J., Rubin, J., Boland, J., Flier, J. and Connie Hon, Deputy Clerk.

B164966 People
 v.
 Jamison

Merits:
Argued by Christine C. Shaver for appellant and by Kenneth J. Kao, Deputy Attorney General for respondent. Cause submitted.

B158069 Stock
 v.
 Law Offices Of Herbert Hafif

Merits:
Argued by Ronald C. Stock for appellant and by Greg Hafif for respondent. Cause submitted.

DIVISION EIGHT (Continued)

B157567 Afkhamnejad
 v.
 Herrera, et al.

Merits:

Argued by Rolando Hidalgo for appellants and by Merak Eskigian for respondent. Submission deferred, parties to file letter brief by next Wednesday, December 3, 2003. The matter will be submitted upon filing of the briefs.

B161580 Seigoso
 v.
 City Of Los Angeles;
 State Of California

Merits:

Argued by Manuel Lopez for appellant and by Amy Jo Field, Deputy City Attorney for respondent (City Of Los Angeles) and Todd T. Leung for respondent (State). Cause submitted.

B163430 La Colectiva, Inc.
 v.
 County Of Los Angeles

Merits:

Argued by Jens B. Koepke for appellant and Manuel Duran appearance only for respondent. Cause submitted.

B161761 School Excess Liability Fund
 v.
 Westchester Fire Insurance Company

Merits:

Argued by Gary L. Green for appellant and by Jeffrey Swedo for respondent. Submission deferred. Any reply to amicus brief and appellant's counsel's addition case cites to be filed by 12/15/2003. The matter will be deemed submitted on 12/15/2003.

November 24, 2003 (Continued)

DIVISION EIGHT (Continued)

B166240 American Cancer Society
v.
Helmer

Matter continued to December 11, 2003, at 9:00 a.m.

B155907 Donald
v.
Truck Insurance Exchange

Matter continued to December 11, 2003, at 1:00 p.m.

Court adjourned.

B164271 People (Not for Publication)
v.
Gonzalez

The judgment is affirmed.

Rubin, J.

We concur: Cooper, P.J.
Boland, J.

B160920 People (Not for Publication)
v.
Rodriguez

The judgment is affirmed.

Rubin, Acting P.J.

We concur: Boland, J.
Flier, J.

DIVISION EIGHT (Continued)

B154584 Murphy, et al. (Certified for Publication)
v.
BDO Seidman, et al.

The trial court's judgment is reversed in part and affirmed in part. The trial court is directed to enter a new and different order: Sustaining the demurrers without leave to amend to appellants' cause of action for violation of Corporations code section 25400; Sustaining the demurrers without leave to amend for failing to allege reliance by Michael Benkert; Daniel, Ethel, Patrick and Wence DiBala; Jason Edwards; Donna Kincaid; Deanna Polani; Steven Schulman; and Heather Ann Ueunten; Sustaining the demurrers without leave to amend for failing to allege reliance with sufficient detail by Robert Boyter, Branch Investment Group LLC, Salvatore Federico, Walter Forsyth, and Stephen Hyden; and Overruling the demurrers in all other respects as to all other appellants, except for those appellants who allege they continued to hold their stock in reliance on respondents' misrepresentations. As to those "holding" appellants, the court is directed to grant them leave to amend the complaint to allege how many shares of stock they would have sold and when. Appellants to recover their costs on appeal.

Rubin, J.

We concur: Cooper, P.J.
Boland, J.